

REMARKS

Applicant requests reconsideration of the application in view of the foregoing amendments and the discussion that follows. The status of the claims as of this response is as follows: Claims 1, 4-50, 52-53 are pending in the above-mentioned patent application. Claims 2-3 and 51 were canceled previously and Claims 4, 6, 48-50 and 52-53 have been canceled herein. Applicant reserves the right to file divisional applications to the separately patentable subject matter thereof. Claims 1, 4-23 and 28-47 stand rejected. Claims 24-27 have been allowed in the current Office Action. Claims 1, 5, 7, 16, 28, 33, 39-41, 43 and 45 have been amended herein.

The Amendments

Claim 1 was amended to recite that the input element comprises a plurality of shelves, the input element being adapted to move the shelves vertically in a predetermined manner to receive packages into the apparatus and move the packages to a holding device therefor. Support therefor is in the Specification, for example, page 21, lines 19-26. Claim 1 was also amended to recite that the output element comprises a plurality of shelves, the output element being adapted to move the shelves vertically in a predetermined manner to receive a package from the holding device. Support therefor is in the Specification, for example, page 21, lines 19-26, and page 32, lines 5-6.

Claims 5 and 7 were amended to change their dependency to Claim 1.

Claim 16 was amended to recite that the input element is adapted to move the shelves vertically in a predetermined manner. Support therefor is in the Specification, for example, page 21, lines 24-26. Claim 16 was also amended to recite that the output element comprises a plurality of shelves, the output element being adapted to move the shelves vertically in a predetermined manner to receive packages from the circuitous transport. Support therefor is in the Specification, for example, page 21, lines 19-26, and page 32, lines 5-6.

Claim 28 was amended to recite that the support housings are moved on shelves vertically in a predetermined manner to receive said support housings and to move said support housings to a holder therefor and then to the fluid dispensing stations. Support therefor is in the Specification, for example, page 21, lines 19-26. Claim 28 was also amended to recited moving each of the support housings away from said processing wherein said support housings are received onto and moved

on shelves vertically in a predetermined manner. Support therefor is in the Specification, for example, page 21, lines 19-26, and page 32, lines 5-6.

Claim 33 was amended to recite that the input element provides movement of the covered packages vertically to the movable holding device. Support therefor is in the Specification, for example, page 21, lines 24-26. Claim 33 was also amended to recite moving the packages vertically in the output element to remove the packages from said processing. Support therefor is in the Specification, for example, page 21, lines 19-26, and page 32, lines 5-6.

Claims 39-41 were amended to satisfy their dependency on Claim 33 with regard to proper antecedent basis.

Claim 43 was amended to recite that the input element comprises a plurality of shelves, the input element being adapted to move the shelves vertically in a predetermined manner to receive packages into the apparatus and move the packages to a holding device therefor. Support therefor is in the Specification, for example, page 21, lines 19-26. Claim 1 was also amended to recite that the output element comprises a plurality of shelves, the output element being adapted to move the shelves vertically in a predetermined manner. Support therefor is in the Specification, for example, page 21, lines 19-26, and page 32, lines 5-6.

Claim 45 was amended to recite that the input element is adapted to move the shelves vertically in a predetermined manner. Support therefor is in the Specification, for example, page 21, lines 24-26. Claim 45 was also amended to recite that the output element is adapted to move the shelves vertically in a predetermined manner. Support therefor is in the Specification, for example, page 21, lines 24-26, and page 32, lines 5-6.

Withdrawal of Claims 48-50 and 52-53

The Office Action indicated that Claims 48-50 and 52-53 were withdrawn from consideration as being directed to a non-elected invention. The Office Action has determined that the invention of Claims 48-50 and 52-53 is novel and unobvious over the invention of Claims 1, 5 and 7-47. As mentioned previously, if this were not the case, then restriction would not be proper.

In any event Applicant reserves the right to file divisional applications to the separately patentable subject matter of Claims 48-50 and 52-53, which have been canceled herein.

Rejection under 35 U.S.C. §103

Claims 1 and 4-47 were rejected under paragraph (a) of the above code section as being unpatentable over Holen in view of MacIndoe, U.S. Patent No. 5,332,549 (MacIndoe), Iwata, *et al.*, U.S. Patent No. 4,495,149 (Iwata) and Stylli, *et al.*, U.S. Patent No. 5,985,214 (Stylli).

The Holen reference discloses a reaction cartridge and carousel for a semi-automated biological sample analyzer that includes sub-systems to simultaneously perform a plurality of enzyme immunoassays for human IgE class antibodies specific to a panel of preselected allergens in each of a plurality of biological samples. The reaction cartridges include a test card that includes an array of test sites. The test card is contained in a reaction well that is provided with a removable cover and a reagent port for delivery and removal of fluids to and from the reaction well. The test sites on the test card are typically about 0.1 inches in diameter and separated by a moat that is 0.01 inches across.

MacIndoe teaches an automated analytical instrument for conducting assays for components of interest in fluid samples. The instrument includes a rotatably mounted supply unit or segment adapted to hold a plurality of foil-sealed magazines containing assay modules, a testing system for assaying a fluid sample for a component of interest using an assay module, an assay module transport assembly for transporting an assay module from a magazine in the supply unit to the testing system, and a microprocessor for controlling the operation of the automated analytical instrument. In one embodiment the assay module transport assembly includes a cutter assembly for cutting away a layer of material such as a thin foil layer covering a desired assay module within the magazine, an assay module receiving platform disposed in front of the magazine, an assay module ejector mechanism for pushing an assay module from the magazine onto the assay module receiving platform, and an assay module transfer mechanism for moving the assay module from the assay module receiving platform to the testing system. The cutter assembly and the assay module receiving platform are movable vertically on a first elevator assembly, and the assay module ejector assembly is movable vertically on a second elevator assembly.

Iwata discloses an analyzing apparatus for applying samples and reagents to the surface of a reaction carrier and for optically analyzing each component contained in the various samples. The dispensing of the samples and reagents and

the optical detection operation are performed by an optics/dispensing mechanism moved relative to the reaction carrier in two dimensions. The optics/dispensing mechanism is combined with a cleaning apparatus for cleaning reagents and samples from a dispensing needle by means of a rinsing agent and air ejected toward the needle. The apparatus further includes an automatic lifting mechanism for lifting and replacing a cover disposed on the reaction carrier and is adapted to move the dispensing needle to a position over a nearby reagent/sample holder so that the needle may take up a desired reagent or sample from the holder and transfer it to the surface of the reaction carrier.

Stylli discloses systems and methods that utilize automated and integratable workstations for identifying chemicals having useful activity. Also disclosed are chemical entities and information (e.g., chemical or biological activities of chemicals) generated or discovered by operation of workstations. Also included are automated workstations that are programmably controlled to minimize processing times at each workstation and that can be integrated to minimize the processing time of the liquid samples from the start to finish of the process.

The Office Action recognizes that Holen does not teach an input means or an output means or removing the cover prior to adding fluids. The Office Action contends, however, that it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate input and output means into the Holen device and method such as taught by Stylli or MacIndoe because of the reduced operator interface with the device, reduced contamination and the ability for continuous operation of the device as taught by MacIndoe and Stylli. It would have been obvious to one of ordinary skill in the art at the time of the invention, continues the Office Action, to use notoriously well known covers such as taught by Iwata and provide means to remove the covers such as taught by Iwata or Stylli because of their well known use in preventing evaporation of fluids as taught by Iwata and if one were not concerned with the sealing advantages taught by Holen.

Applicant respectfully traverses the above rejection. With regard to Claim 1, for example, the issue is not whether using covers and removing covers would be possible. The issue is whether it would have been obvious to one of ordinary skill in the art, based on the teaching of Holen and the secondary references, to provide for removal of the cover in an apparatus to add fluid through the opening. Applicant submits that it would not have been obvious to the skilled artisan. Holen's teaching is

directly contrary to such a concept. Even though Holen states that his cover may be removable, Holen does not remove it for the application and removal of fluid to and from the cartridge and his apparatus is constructed accordingly. As a matter of fact, Holen goes to great lengths to make sure that the cover provides a good seal during the addition and removal of fluids to and from his cartridge (column 10, lines 4-9, for example) and uses probes and pumps for addition and removal of fluids.

It is important to note that the Office is required to consider all that a reference discloses; piecemeal reconstruction of the prior art is not allowed. It is not permissible "to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art" *In re Wesslan* 147 U.S.P.Q. 91 at 394, 827 O.G. 348 at 351 (1966). In determining the scope and content of the prior art, references must be considered in their entirety, as a whole, including portions that would lead away from the claimed invention. *In re Panduit*, 810 F.2d 1561, 1 U.S.P.Q.2d 1593 (Fed Cir. 1987).

Applicant acknowledges the indication in the Office Action that Claims 24-27 are allowed. The combined teachings of the references do not suggest an apparatus that comprises (i) an input element adapted to move the shelves vertically in a predetermined manner to receive packages into the apparatus and move the packages to a holder or (ii) an output element adapted to move the shelves vertically in a predetermined manner to receive a package from the circular tray. The Office Action agrees with this proposition.

Without acquiescing in the rejection of Claims 1, 4-23 and 28-47 in the Office Action, Applicant has amended Claims 1, 16, 28, 33, 43 and 45 in a manner consistent with allowed Claim 24. Therefore, Claims 1, 16, 28, 33, 43 and 45 and claims dependent therefrom are not obvious in view of the combined teachings of Holen, MacIndoe, Iwata and Stylli. MacIndoe's disclosure relates to a cutter assembly and assay module receiving platform 161 that are movable vertically on a first elevator assembly and an assay module ejector assembly 151 movable vertically on a second elevator assembly. There is no disclosure or suggestion of an input element adapted to move shelves vertically to receive support housings into an apparatus or an output element adapted to move shelves vertically to receive a support housing from a holding device for the support housings as found in the presently claimed invention.

Prior Art Made of Record

Applicant acknowledges the at least implicit indication in the Office Action that Unger (U.S. Patent No. 3,533,744), Drozdowski, *et al.* (U.S. Patent No. 3,832,135), Takekawa (U.S. Patent No. 4,483,927), Farber, *et al.* (U.S. Patent No. 4,720,463), Higo, *et al.* (U.S. Patent No. 5,055,408), and MacIndoe (EP 0,549,759 B1) do not disclose or suggest the inventions of the above claims either individually or in combination with one another or with one or more of Holen, MacIndoe, Iwata and Stylli.

Conclusion

Claims 1, 5 and 7-23 and 28-47 satisfy the requirements of 35 U.S.C. 103. Claims 24-27 have been allowed. Allowance of the above-identified patent application, it is submitted, is in order.

Respectfully submitted,



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